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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(S) NO. 3714 /2006

PETITIONER I.P. Sarthi, S/o. P.R. Sarthi, aged about 36 years, Sub Engineer, R/o. Chakradhar Nagar, Raigarh, District Raigarh (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through Secretary, Department of Urban Department, D.K.S. Bhavan, Mantralaya, Raipur (C.G.)

2. Director, Town Administration & Development, Directorate, Raipur (C.G.)

3. Commissioner, Municipal Corporation, District Raigarh(C.G.)

P.R. No. 3723/06
Presented by Shri Rakesh Anthony
dated 20/7/06

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS, PROHIBITION, CERTIORARI ETC. OR ANY OTHER DIRECTION OR ORDER TO DO JUSTICE IN THE

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HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (S.) NO.3714 OF 2006

Petitioner : I.P. Sarthi

versus

Respondents : State of Chhattisgarh and others

Present : Mr. Sunil Otwani, counsel for the petitioner.
Mr. Sumesh Bajaj, Government Advocate for respondents No.1 and 2.
Mr. B.D.Guru, counsel for respondent No.3.

ORDER
(Passed on 11th of October, 2006)

Learned counsel appearing for the petitioner submits that the petitioner was working on the post of Sub-Engineer in the Municipal Corporation, Raigarh. By the impugned order dated 9-6-2006 (Annexure P-1) passed by respondent No.3, the petitioner was placed under suspension for misuse of Municipal Corporation's property. The petitioner has challenged the impugned order on the ground that the same was passed by an authority who is neither an appointing authority nor a disciplinary authority. Secondly, respondent No.3 has not obtained approval of the appointing authority as provided under Rule 9 of the Madhya Pradesh/Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (henceforth 'the Rules of 1966).

2. I have heard learned counsel for the parties and perused records appended to the petition.

3. A bare reading of the impugned order dated 9-6-2006 (Annexure P-1) makes it clear that the suspension order was passed in contemplation of departmental enquiry as it is clearly stated in the order that charge-sheet etc. would be issued separately. The impugned suspension order was reported forthwith to the appointing authority, i.e., Commissioner-cum-Director, Town Administration and Development Department, Directorate, Raipur. The impugned order is just and proper and passed in accordance with Rule 9 of the Rules of 1966. The relevant provisions of Rule 9 of the Rules of 1966 read as under :-

> "9. (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order, may place a Government servant under suspension –
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> (a) where a disciplinary proceeding against him is contemplated or is pending, or
>
> (b) where a case against him in respect of any criminal offence is under inventilation, inquiry of trial :
>
> Provided that a Government Servant shall invariably be placed under suspension when a challan for a criminal offence involving corruption or other moral turpitude is filed against him :
>
> Provided further that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made."

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4. Second proviso to Rule 9(1) of the Rules of 1966 prescribes that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

5. Admittedly, respondent No.3 is not the appointing authority, but respondent No.2 is the appointing authority. Respondent No.3, while placing the petitioner under suspension, had reported to the appointing authority, i.e., Commissioner-cum-Director, Town Administration and Development Department, Directorate, Raipur forthwith.

6. It is submitted by learned counsel for the petitioner that no approval has been obtained by the appointing authority. Once the charge-sheet has been issued, it is deemed to have been approved by the appointing authority.

7. It is well settled principle of law that the suspension is temporary and it does not involve punishment with civil consequences. Suspension means a temporary deprivation of the functions not amounting to any reduction of his rank or his status. The employee under suspension continues to be a Government Servant, he is not permitted to work keeping in view pendency of departmental enquiry to avoid undue influence in the proceedings of departmental enquiry and likely tampering with on records.

8. For the reasons aforestated and as a result, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Gopal